Ordinance, were authorised to construct, maintain and repair docks and wharves and to carry on, *inter alia*, the business of wharfingers and warehousemen at the Port of Singapore, and to levy rates for the wharfage and storage of goods. In an action by the appellants against the board for damages for the loss of goods, the property of the appellants, which had been received by the board in one of their warehouses, but not delivered to the appellants, the board claimed that the action, not having been commenced within the prescribed period of limitation after the acts complained of, was barred by section 2(2) of the Public Authorities Protection Ordinance of the Straits Settlements, which was in substantially the same terms as the Limitation Act, 1939, section 21(1). It was held that the board having exercised their power to carry on the trade of wharfingers and warehousemen did not thereby cease to function as a harbour board and undertake some trading activity of a non-public and purely subsidiary nature; they were supplying facilities essential to the shipping community in one of the ways authorised by the Ordinance by which they had been created a harbour board charged with the management and control of the port, and were thus fulfilling one of the main purposes for which they had been given statutory powers; and, therefore, they were entitled to the protection of the Ordinance. Lord Tucker in delivering the judgment of their Lordships of the Privy Council said at page 225:

"... the existence or non-existence of a contract is not a decisive test, and on the facts in the present case their Lordships are clearly of opinion that the question of contract is immaterial to their decision since, on any view, the board were exercising their permissive powers to perform a normal function of a harbour board, and in so doing were providing a service essential to the shipping and commercial community of Singapore, and, accordingly, were entitled to the protection of the Public Authorities Protection Ordinance."

The third case relied on by counsel for the respondents is the case of *Littlewood* v. *George Wimpey and Co., Ltd., British Overseas Airways Corporation.*[10] That case clearly does not apply to the instant case, as the action there was for damages for negligence against the first defendants and for negligence and/or breach of statutory duty against the corporation. The judge found that the first defendants' servant had been negligent and that the corporation were in breach of their statutory duty to provide a safe system of work and that the work on which the plaintiff was engaged when he was injured was incidental to and necessary for the performance by the corporation of their public duty.

Ong Hock Sim F.J. concurred.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

KUMARASAMY v. HAJI DAUD

[O.C.J. (Syed Othman J.) April 1, 1972]

[Johore Bahru — Summons in Chambers No. 34 of 1971]

Company — Winding-up — Judgment creditor — Execution — Postponement — Right of creditor — Discretion of court — Costs — Companies Act, 1965, s. 299.

This was an application by the liquidator of Bunga Raya Chemical Co. Sdn. Bhd. for an order that the execution proceedings to recover the taxed costs, be set aside and that the sum of $711 paid by the applicant to the bailiff to prevent the seizure of his car, be refunded.

The question to be determined was whether, in the circumstances of this case, the applicant liquidator was personally liable for the taxed costs.

Held, dismissing the application: all the indications showed that it was the applicant, who, acting on his own, was responsible for staying a sale which the court had ordered. From his own affidavits, the applicant could not be said to have been acting in good faith and with a sense of responsibility to his duties. His action caused the respondent to apply to the court for his rights to be set aside. When the court made the order, he was the one who was ordered to pay the costs. He was, therefore, personally responsible.

Cases referred to:-

(1) *Stead Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840.

(2) *In re Grosvenor Metal Co. Ltd.* [1950] 1 Ch. 63.

SUMMONS IN CHAMBERS.

U. Masacorale for the applicant.

L. M. Ong for the respondent.

Cur. Adv. Vult.

Syed Othman J.: This is an application by the liquidator of Bunga Raya Chemical Co. Sendirian Berhad (the applicant) for an order that the execution proceedings to recover the taxed costs be set aside and that the sum of $711 paid by the applicant to the bailiff to prevent the seizure of his car to be refunded.

These are the circumstances leading to the application. The respondent had obtained leave to sign final judgment against Bunga Raya Chemical Co. Sendirian Berhad (the company) for the sum of $28,066.34 together with interest. On a writ of seizure and sale being issued the bailiff seized movable goods belonging to the company. Then on an application for summons for directions, the court ordered, *inter alia*, that the sale by public auction of all movable property be fixed on 2nd August, 1970. On 23rd July, 1970 Messrs. Wang, Kumarasamy & Co., of which the applicant is a partner, wrote to the bailiff advising him that the company had passed a special resolution going into voluntary liquidation on 22nd July, 1970 and had appointed the applicant as liquidator and asked the bailiff to release all the goods that had been seized. Acting under section 299(1) of the Companies Act, 1965 the bailiff released the goods. So far as is relevant to this case the sub-section reads:

"Subject to the provisions of sub-section (3) of this section where any goods of a company are taken in execution and before the sale thereof... notice is served on the bailiff that... a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required deliver the goods and any money seized... to the liquidator".

Sub-section (3), however, provides that the rights conferred by the section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit. The respondent applied to the court to have the rights conferred on the liquidator by section 299(1) of the Companies Act set aside and the auction sale to be proceeded with. The main grounds for the application were that the passing of the resolution of winding up of the company had been a device or a trick to stall completion of the execution of the writ of seizure and sale and that from the time the judgment had been entered on 31st January, 1970 to the time the order under summons for directions had been obtained (a period of about 6 months) the company had not paid any sum towards the judgment, and that the respondent was the only judgment creditor of the company. The application was heard on 30th July, 1970 and the court ordered, *inter alia*, that the rights of the liquidator be set aside, the sale restored and the costs of and incidental to the application be taxed and paid to the respondent. On taxation $711 was allowed. When the liquidator did not pay the respondent proceeded to execute the amount against the personal assets of the applicant by issuing a writ of seizure and sale and seizing the applicant's car.

The question to be determined is whether in the circumstances of the case the liquidator is personally liable.

For the arguments on behalf of the applicant that in the circumstances of the case the liquidator cannot be held to be personally responsible for the taxed costs, reliance is placed on *Stead Hazel & Co.* v. *Cooper*.[1] On behalf of the respondent I have been referred to certain authorities of which I need only concern myself with *In re Grosvenor Metal Co. Ltd.*[2]

In *Stead Hazel's* case it was held that when a liquidator appointed by the court performed a contract of the company without disclaimer or purports to make a new contract on its behalf, there was no presumption that he did so in his personal capacity, even though he did describe himself as liquidator.

As far as I can see this case relates to a different situation. The present case arises from the act of the liquidator in having made the request to the bailiff to release the goods which he knew were to be sold to satisfy a judgment debt on a date which had already been fixed by the court.

In *In re Grosvenor Metal Co. Ltd., supra*, the applicant company, a judgment creditor of Grosvenor Metal Co. Ltd., having issued but failed to complete execution before the date or which the latter company went into liquidation, took out summons for an order that, pursuant to section 325(1)(c) of the Companies Act, 1948, the amount of their judgment debts together with interest thereon, be raised out of the proceeds of sale on the effect of the Grosvenor Metal Co. Ltd. and be paid to the applicant company.

Vaisey J. held as a fact in that case the applicant company were persuaded or induced or requested to stay their hands in the matter of execution. While acquitting the officers of the Grosvenor Metal Co. Ltd. of any kind of dishonesty or impropriety the learned judge thought that but for their pressure upon the applicants, the execution would have been completed before the commencement of the winding up. He set aside the rights of the liquidator in favour of the applicant company and directed the liquidator to pay the costs of the applicants.

The principle in this case can be put in this form. If a company which is in the process of winding up is responsible for staying the hands of a judgment creditor in the matter of execution even in good faith then the rights of the liquidator will have to be set aside in favour of the judgment creditor. It will be seen that it was the company who acted in that case, but there is no indication whether the liquidator had to pay the costs personally.

Both sides have also referred me to the portion of the Australian Company Law and Practice by *Wallace and Young* at page 680 which reads: —

"Generally speaking, there is a difference between the case where proceedings are brought or defended by the liquidator in the name of the company, and the case where the liquidator proceeds or is proceeded against in the winding up in his own name.

In the former case an unsuccessful liquidator *prima facie* does not personally pay the costs of the other party — such costs coming out of the estate.

In the latter case the position varies according as to whether liquidator is applicant or respondent.

An unsuccessful liquidator-applicant should *prima facie* be ordered to pay costs (he *may* subsequently be allowed these costs out of the estate)".

In the present case all the indications are that it was the applicant who acting on his own was responsible for staying a sale which the court had ordered.

In one of his affidavits he referred to a portion of a written declaration made by the majority of directors during the period when the goods were under seizure. The portion reads:—

"... it had been proved to the satisfaction of this meeting that the company had made an inquiry into the affairs of the company and that if the existing assets are realised at the present market value the liabilities may be met within a period of twelve months after commencement of winding up, subject of course to any exigency that may arise beyond our control."

It is not shown whether the applicant himself has made any inquiry that the company was in fact in the position stated in the declaration.

He further deposed that the company was solvent with assets not exceeding $550,789.00 and debts and liabilities not exceeding $437,835.00. If in fact the company was solvent to the extent indicated I fail to understand the necessity of its having to wind up. The applicant gives, as far as I can see, no explanation as to why the company had not been able to satisfy the present judgment debt, which after all is very much less than the excess assets and which had been standing for nearly six months.

Then according to his latest affidavit, on 19th September, 1970 he undertook as liquidator to pay the said costs within a month. Although the respondent refused the undertaking he did not proceed to execute

the amount of the taxed costs against the personal assets of the liquidator until 2nd January, 1971. The applicant himself admits that he has not been able to collect any money from the debtors of the company.

From his own affidavits, the applicant cannot be said to have been acting in good faith and with a sense of responsibility to his duties, particularly when he requested the bailiff to deliver to him the goods that had been seized. His action caused the respondent to apply to the court for his rights to be set aside. When the court made the order, he was the one who was ordered to pay the costs. He is therefore personally responsible.

The application is dismissed with costs against the liquidator personally.

Application dismissed.

Solicitors: *Jackson & Masacorale; L. M. Ong & Co.*

MARY NG & ANOR. v. OOI GIM TEONG

[O.C.J. (Mohamed Azmi J.) April 6, 1972]

[Kuala Lumpur — Originating Summons No. 53 of 1971]

Family Law — Maintenance — Marriage according to Chinese Law and Custom — Divorce by Chinese customary law — Entitlement of female spouce to maintenance — Obligation to provide for child.

Chinese Law and Custom — Divorce — Formalities — Validity of.

This was a claim for maintenance under section 3 of the Married Women and Children (Maintenance) Ordinance, 1950.

The first applicant, who alleged to be the lawful wife of the respondent, claimed maintenance at the rate of $150 per month for herself, and a further sum of $100 per month for her infant child, the second applicant.

It was not in dispute that on December 10, 1967, the first applicant and the respondent were lawfully married in Penang according to Chinese rites and customs. Moreover, the respondent did not dispute his liability to pay maintenance for his son the second applicant. However, he claimed he was not liable to maintain the first applicant on the ground that he had already divorced her according to Chinese customary law on May 24, 1970, and that their marriage was accordingly dissolved.

Thus, the main issue was whether the respondent did in fact divorce the first applicant on May 24, 1970. The court had to consider three factors: (a) whether according to Chinese custom, as applied in the States of Malaya, divorce is possible; (b) what form does such a divorce take; and (c) did in point of fact a divorce take place according to such form.

Expert evidence was given on Chinese customary marriage and divorce.

Held: (1) under Chinese customary law a husband can divorce his principal wife unilaterally for cause even if she has borne him a son;

(2) the divorce must be made publicly known. The cardinal rule is that it should not be made secret. In the instant case, the respondent's intention was made known even before the divorce. The fact that the respondent did not take his wife to her mother's house for the purpose of announcing the divorce was not fatal, having regard to the real intention behind the practice in ancient times. This requirement had been complied with;

(3) therefore, under the circumstances, the respondent had lawfully divorced the first applicant according to Chinese custom with effect from May 24, 1970, and, as such she was not entitled to maintenance. However, the respondent should pay $100 to the first applicant for the maintenance of the second applicant, the child of the marriage until such time as the child is able to maintain himself.

Per Mohamed Azmi J.: "... In dismissing this application, I have not overlooked the possible effect of my decision on the position and status of Chinese women in this country who have gone through marriage according to their personal law. As learned counsel for the applicants has forcefully put it, allowing a Chinese man in this modern age to divorce his wife for either talkativeness or disobedience would amount to giving thousands of Chinese husbands a gun in their hands. This may be so; and if the Chinese customary law on marriage and divorce is no longer popular and considered obsolete, it is for the legislature to make inroads into them, as has already been done in China".

Cases referred to:-

(1) *Woon Ngee Yew & Ors.* v. *Ng Yoon Thai & Ors.* [1941] M.L.J. 37.

(2) *Choo Ang Chee* v. *Neo Chan Neo & Ors.* (1908) 12 S.S.L.R. 120.

(3) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257.

[Editorial Note: See article on "Chinese Customary Marriage and Divorce" by Lee Siow Mong at p. iii *supra.*]

SUMMONS.

E. J. Lawrence for the applicants.

V. C. George (*K. S. Narayanan* with him) for the respondent.

The facts so far as they are material to this report, appear sufficiently from the judgment below.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for maintenance under section 3 of the Married Women and Children (Maintenance) Ordinance No. 36 of 1950. The first applicant, who alleged to be the lawful wife of the respondent, claims maintenance at the rate of $150 per month for herself and a further sum of $100 per month for the maintenance of her infant child, the second applicant. It is not in dispute that on December 10, 1967 the first applicant and the respondent were lawfully married in Penang according to Chinese rites and customs, and that out of this marriage, the first applicant gave birth to a boy (second applicant) on October 20, 1968. Subject to quantum, the respondent does not dispute his liability to pay maintenance for his son, who is admittedly in the custody of the first applicant. But the respondent claims that he is not liable to maintain the first applicant on the ground that he had already divorced her according to Chinese customary law on May 24, 1970 and that their marriage was accordingly dissolved.

The main issue in this case is, therefore, whether the respondent did in fact divorce Mary Ng (the first applicant) on May 24, 1970. For the determination of this issue, I agree with the submission of learned counsel for the respondent that on the authority of